

## CHAPTER 420

### BUSINESS DEVELOPMENT CORPORATIONS

#### SECTION

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**420-1 Definitions.** As used in this chapter, the following words and phrases, unless differently defined or described, shall have the meanings and references as follows:

"Board of directors": The board of directors of the corporation created under this chapter.

"Corporation": A business development corporation created under this chapter.

"Financial institution": Any banking corporation or trust company, building and loan association, insurance company, or related corporation, partnership, foundation, or other institution engaged primarily in lending or investing funds.

"Loan limit": For any member, the maximum amount permitted to be outstanding at one time on loans made by the members to the corporation, as determined under this chapter.

"Member": Any person, corporation, company, association, partnership, foundation, or other institution, including any financial institution, which or who undertakes to lend money to a corporation created under this chapter, upon its call, and in accordance with this chapter, but not including the Small Business Administration and any other federal agency.

"Pacific Islands": The State of Hawaii, American Samoa, Guam, the Cook Islands, Easter Island, the Federated States of Micronesia, Fiji, Kiribati, the Marshall Islands, Nauru, New Caledonia,

Niue, the Northern Mariana Islands, Belau (Palau), Papua New Guinea, Pitcairn Island, the Solomon Islands, Tokelau, Tonga, Tuvalu, Vanuatu, Wallis and Futuna, French Polynesia, and Western Samoa.

**§420-2 Creation of corporation; purposes.** Any number of persons not less than five, a majority of whom shall be residents of the State, who may desire to create a business development corporation under this chapter, for the purpose of promoting, developing, and advancing the prosperity and economic welfare of the Pacific Islands and, to that end, to exercise the powers and privileges hereinafter provided, may be incorporated in the following manner; such persons shall, by articles of incorporation filed with the director of commerce and consumer affairs, under their hands and seals, set forth:

- (1) The name of the corporation, which shall include the words "Business Development Corporation".
- (2) The location of the principal office of the corporation, but the corporation may have offices in such other places within the State as may be fixed by the board of directors.
- (3) The purpose for which the corporation is founded, which shall include the following:

The purposes of the corporation shall be to promote, stimulate, develop, and advance the business prosperity and economic welfare of the Pacific Islands and their citizens; to encourage and assist through loans, investments, or other business transactions, in the location of new business and industry in the Pacific Islands and to rehabilitate and assist existing business and industry; and so to stimulate and assist in the expansion of all kinds of business activity which will tend to promote the business development and maintain the economic stability of the Pacific Islands, provide maximum opportunities for employment, encourage thrift, and improve the standard of living of the citizens of the Pacific Islands; similarly, to cooperate and act in conjunction with other organizations, public or private, in the promotion and advancement of industrial, commercial, agricultural, and recreational developments in the Pacific Islands, and to provide financing for the promotion, development, and conduct of all kinds of business activity in the Pacific Islands.

In furtherance of these purposes and in addition to the powers conferred on business corporations by the general corporation laws, the corporation shall, subject to the restrictions and limitations herein contained, have the following powers:

- (1) To elect, appoint, and employ officers, agents and employees; to make contracts and incur liabilities for any of the purposes of the corporation; provided that the corporation shall not incur any secondary liability by way of guaranty or endorsement of the obligations of any person, firm, corporation, joint-stock company, association, or trust, or in any other manner.
- (2) To borrow money from the members and others, including the Small Business Administration and other federal agencies, for any of the purposes of the corporation; to issue therefor its bonds, debentures, notes, or other evidences of indebtedness, whether secured or unsecured, and to secure the same by mortgage, pledge, deed of trust, or other lien on its property, franchises, rights and privileges of every kind and nature or any part thereof or interest therein, without securing stockholder or member approval.
- (3) To make loans to any person, firm, corporation, joint-stock company, association, or trust, and to establish and regulate the terms and conditions with respect to the loans and the charges for interest and service connected therewith; provided that the

corporation shall not approve any application for a loan unless and until the person applying for the loan shows that the person has applied for the loan through ordinary banking channels and that the loan has been refused by at least one bank or other financial institution.

- (4) To purchase, receive, hold, lease, or otherwise acquire, and to sell, convey, transfer, lease, or otherwise dispose of real and personal property, together with such rights and privileges as may be incidental and appurtenant thereto and the use thereof, including, but not restricted to, any real or personal property acquired by the corporation from time to time in the satisfaction of debts or enforcement of obligations.
- (5) To acquire the good will, business, rights, real and personal property, and other assets, or any part thereof, or interest therein, of any persons, firms, corporations, joint-stock companies, associations, or trusts, and to assume, undertake, or pay the obligations, debts, and liabilities of any such person, firm, corporation, joint-stock company, association, or trust; to acquire improved or unimproved real estate for the purpose of constructing industrial plants or other business establishments thereon or for the purpose of disposing of the real estate to others for the construction of industrial plants or other business establishments; and to acquire, construct, or reconstruct, alter, repair, maintain, operate, sell, convey, transfer, lease, or otherwise dispose of industrial plants or business establishments.
- (6) To acquire, subscribe for, own, hold, sell, assign, transfer, mortgage, pledge, or otherwise dispose of the stock, shares, bonds, debentures, notes, or other securities and evidences of interest in, or indebtedness of, any person, firm, corporation, joint-stock company, association, or trust, and while the owner or holder thereof to exercise all of the rights, powers, and privileges of ownership, including the right to vote thereon.
- (7) To mortgage, pledge, or otherwise encumber any property, right, or thing of value, acquired pursuant to the powers contained in paragraphs (4), (5), or (6), as security for the payment of any part of the purchase price thereof.
- (8) To cooperate with and avail itself of the facilities of the department of business, economic development, and tourism, and any similar governmental agencies; and to cooperate with and assist, and otherwise encourage organizations in the various communities of the Pacific Islands in the promotion, assistance, and development of the business prosperity and economic welfare of the communities or of the Pacific Islands or of any part thereof.
- (9) To avail itself of any loan or other assistance from nonmembers, including the Small Business Administration or any other federal agencies.
- (10) To do all acts and things necessary or convenient to carry out the powers expressly granted in this chapter.

**§420-3 Description of stock.** The articles of incorporation shall set forth the amount of total authorized capital stock and the number of shares into which the capital stock is divided; the par value of each share; the amount of capital stock with which the corporation will commence business and, if there is more than one class of stock, a description of the different classes, and the names and post office addresses of the subscribers of stock and the number of shares subscribed by each. The aggregate of the subscription shall be the amount of capital with which the corporation will commence business. The articles may also contain any provision consistent with the laws of the State for the regulation of the affairs of the corporation or creating, defining, limiting, and regulating its powers. The articles shall be in accordance with section 415-54.

**§420-4 Articles of incorporation; effective when.** The articles of incorporation become effective from the date the articles are filed in the office of the director of commerce and consumer affairs; with such consent, the stock subscribers, their successors and assigns, shall become a body corporate, by the name specified in the articles, subject to amendment and dissolution as provided in this chapter. The incorporators shall have the authority and shall perform such acts and things as required by section 420-2.

**§420-5 Period of corporate existence.** The corporation shall have succession and corporate existence for such period of duration as is agreed upon, which may be perpetual.

**§420-6 Financial institutions; memberships; etc.** Notwithstanding any rule at common law or any provision of any general or special law or any provision in their respective charters, agreements of association, articles of organizations, or trust indentures:

- (1) All domestic corporations organized for the purpose of carrying on business within the Pacific Islands, including without implied limitation any public utility companies and insurance and casualty companies and foreign corporations licensed to do business in the Pacific Islands, and all trusts, may acquire, purchase, hold, sell, assign, transfer, mortgage, pledge, or otherwise dispose of any bonds, securities, or other evidences of indebtedness created by, or the shares of the capital stock of, the corporation, and while owners of the stock exercise all the rights, powers, and privileges of ownership, including the right to vote thereon, all without the approval of any regulatory authority of the Pacific Islands;
- (2) All financial institutions may become members of the corporation and make loans to the corporation as provided herein;
- (3) A financial institution which does not become a member of the corporation shall not be permitted to acquire any share of the capital stock of the corporation; and
- (4) Except as to financial institutions which are to continue to be subject to the limitations contained in (3) herein, each member of the corporation may acquire, purchase, hold,

sell, assign, transfer, mortgage, pledge, or otherwise dispose of, any bonds, securities or other evidences of indebtedness created by, or the shares of the capital stock of the corporation, and while owners of the stock exercise all the rights, powers and privileges of ownership, including the right to vote thereon, all without the approval of any regulatory authority of the Pacific Islands; provided that the amount of the capital stock of the corporation which may be acquired by any member pursuant to the authority granted herein shall not exceed fifty per cent of the loan limit of such member. The amount of capital stock of the corporation which any member is authorized to acquire pursuant to the authority granted herein is in addition to the amount of capital stock in corporations which such member may otherwise be authorized to acquire.

**§420-7 Loans to corporation by members.** Any person, corporation, company, association, partnership, foundation, or other institution, including any financial institution may request membership in the corporation by making application to the board of directors on such form and in such manner as the board of directors may require, and membership shall become effective upon acceptance of the application by the board.

Any other law to the contrary notwithstanding, each member of the corporation shall make loans to the corporation as and when called upon by it to do so on such terms and other conditions as shall be approved from time to time by the board of directors, subject to the following conditions:

- (1) All loan limits shall be established at the thousand dollar amount nearest to the amount computed in accordance with this section.
- (2) The amount of total reserves against losses shall be left to the discretion of the board of directors.
- (3) The total amount outstanding on loans to the corporation made by any member at any one time, when added to the amount of the investment in the capital stock of the corporation then held by such member, shall not exceed:
  - (A) Fifty per cent of the total amount then outstanding on loans to the corporation by all members, including in the total amount outstanding, amounts validly called for loan but not yet loaned.
  - (B) The following limit, to be determined as of the time the member becomes a member on the basis of the audited balance sheet of the member at the close of its fiscal year immediately preceding its application for membership, or, in the case of an insurance company, its last annual statement to the insurance commissioner two per cent of the capital and surplus of commercial banks and trust companies; one per cent of the total outstanding loans made by a building and loan association; one per cent of the capital and unassigned surplus of stock insurance companies, except fire insurance companies; one per cent of the unassigned surplus of mutual insurance companies, except fire insurance companies; one-tenth of one per cent of the assets of fire insurance companies;

and such limits as may be approved by the board of directors of the corporation for other financial institutions and other members.

- (4) Subject to paragraph (3)(a) of this section, each call made by the corporation shall be prorated among the members of the corporation in substantially the same proportion that the adjusted loan limit of each member bears to the aggregate of the adjusted loan limits of all members. The adjusted loan limit of a member shall be the amount of such member's loan limit, reduced by the balance of outstanding loans made by such member to the corporation.
- (5) All loans to the corporation by members shall be evidenced by bonds, debentures, notes, or other evidences of indebtedness of the corporation, which shall be freely transferable at all times, and which shall bear interest at a rate of not less than one-quarter of one per cent in excess of the rate of interest determined by the board of directors to be the prime rate prevailing at the date of issuance thereof on unsecured commercial loans.

**§420-8 Period of membership, withdrawal.** Membership in the corporation shall be for the duration of the corporation, provided that upon written notice given to the corporation one year in advance, a member may withdraw from membership in the corporation at the expiration date of such notice.

A member shall not be obligated to make any loans to the corporation pursuant to calls made subsequent to the withdrawal of the member.

**§420-9 Powers of stockholders, and members.** The stockholders and the members of the corporation shall have the following powers of the corporation:

- (1) To determine the number of and elect directors as provided in section 420-11;
- (2) To make, amend, and repeal bylaws;
- (3) To amend the articles as provided in section 420-10;
- (4) To exercise such other of the powers of the corporation as may be conferred on the stockholders and the members by the bylaws.

As to all matters requiring action by the stockholders and the members of the corporation, the stockholders and the members shall vote separately thereon by classes, and, except as otherwise herein provided, the matters shall require the affirmative vote of a majority of the votes to which the stockholders present or represented at the meeting are entitled and the affirmative vote of a majority of the votes to which the members present or represented at the meeting are entitled.

Each stockholder shall have one vote, in person or by proxy, for each share of capital stock held by the stockholder, and each member shall have one vote, in person or by proxy, except that any member having a loan limit of more than \$1,000 shall have one additional vote, in person or by proxy, for each additional \$1,000 which the member is authorized to have outstanding on loans to the corporation at any one time as determined under section 420-7(3)(B).

**§420-10 Articles; amendments.** The articles may be amended by the votes of the stockholders and the members of the corporation, voting separately by classes, and the amendments shall require approval of the affirmative vote of two-thirds of the votes to which the stockholders are entitled and two-thirds of the votes to which the members are entitled; provided that no amendment of the articles which is inconsistent with the general purposes expressed herein or which authorizes any additional class of capital stock to be issued, or which eliminates or curtails the right of the director of commerce and consumer affairs to examine the corporation or the obligation of the corporation to make reports as provided in section 420-14, shall be made without amendment of this chapter; and provided further that no amendment of the articles which increases the obligation of a member to make loans to the corporation, or makes any change in the principal amount, interest rate, maturity date, or in the security or credit position, of any outstanding loan of a member to the corporation, or affects a member's right to withdraw from membership as provided in section 420-8, or affects a member's voting rights as provided in section 420-9, shall be made without the consent of each member affected by the amendment.

Within thirty days after any meeting at which amendment of the articles has been adopted, articles of amendment signed and sworn to by the president, treasurer, and a majority of the directors, setting forth the amendment and the due adoption thereof, shall be submitted to the commissioner of financial institutions, who shall examine them and if the commissioner finds that they conform to the requirements of this chapter, shall so certify and endorse the commissioner's approval thereon. Thereupon, the articles of amendment shall be filed in the office of the commissioner and no amendment shall take effect until the articles of amendment have been filed.

**§420-11 Board of directors; officers.** The business and affairs of the corporation shall be managed and conducted by a board of directors, a president, and treasurer, and such other officers and such agents as the corporation by its bylaws shall authorize. The board of directors shall consist of such number, not less than three nor more than fifteen, as shall be determined in the first instance by the incorporators and thereafter annually by the members and the stockholders of the corporation. The board of directors may exercise all the powers of the corporation except such as are conferred by law or by the bylaws of the corporation upon the stockholders or members and shall choose and appoint all the agents and officers of the corporation and fill all vacancies except vacancies in the office of director which shall be filled as hereinafter provided. The board of directors shall be elected as hereinafter provided. The board of directors shall be elected in the first instance by the incorporators and thereafter at each annual meeting of the corporation, or, if no annual meeting is held in any year at the time fixed by the bylaws, at a special meeting held in lieu of the annual meeting. At each annual meeting, or at each special meeting held in lieu of the annual meeting, the members of the corporation shall elect two-thirds of the board of directors and the stockholders shall elect the remaining directors. The directors shall hold office until the next annual meeting of the corporation or special meeting held in lieu of the annual meeting after their election and until their successors are elected and qualified unless sooner removed in accordance with the provisions of the bylaws. Any vacancy in the office of a

director elected by the members shall be filled by the directors elected by the members, and any vacancy in the office of a director elected by the stockholders shall be filled by the directors elected by the stockholders.

Directors and officers shall not be responsible for losses unless the losses have been occasioned by the wilful misconduct of the directors and officers.

**§420-12 Earned surplus.** Each year the corporation shall set apart as earned surplus not less than ten per cent of its net earnings for the preceding fiscal year until the surplus shall be equal in value to one-half of the amount paid in on the capital stock then outstanding. Whenever the amount of surplus established herein becomes impaired, it shall be built up again to the required amount in the manner provided for its original accumulation. Net earnings and surplus shall be determined by the board of directors, after providing for such reserves as the directors deem desirable, and the directors' determination made in good faith shall be conclusive on all persons.

**§420-13 Deposit of funds.** The corporation shall not deposit any of its funds in any banking institution unless the institution has been designated as a depository by a vote of a majority of the directors present at an authorized meeting of the board of directors, exclusive of any director who is an officer or director of the depository so designated.

The corporation shall not receive money on deposit.

**§420-14 Examination by commissioner of financial institutions.** The corporation shall be subject to the examination of the commissioner of financial institutions, and shall make reports of its condition not less than annually to the commissioner, who in turn shall make copies of the reports available to the director of commerce and consumer affairs and to the governor, and the corporation shall also furnish such other information as may from time to time be required by the commissioner.

**§420-15 First meeting of corporation.** The first meeting of the corporation shall be called by a notice signed by three or more of the incorporators, stating the time, place, and purpose of the meeting. A copy of the notice shall be mailed, or delivered, to each incorporator at least five days before the day appointed for the meeting. The first meeting may be held without the notice upon agreement in writing to that effect signed by all the incorporators. There shall be recorded in the minutes of the meeting a copy of the notice or of the unanimous agreement of the incorporators.

At the first meeting the incorporators shall organize by the choice, by ballot, of a temporary clerk, by the adoption of bylaws, by the election by ballot of directors, and by action upon such other matters within the powers of the corporation as the incorporators may see fit. The temporary clerk shall be sworn and shall make and attest a record of the proceedings. Two-thirds of the incorporators shall be a quorum for the transaction of business.



**§420-16 Tax exemption; credit.** The corporation shall not be subject to any taxes based upon or measured by income which are levied by the State; and the securities, evidences of indebtedness, and shares of the capital stock issued by the corporation established under this chapter, their transfer, and income therefrom and deposits of financial institutions invested therein, shall at all times be free from taxation within the State.

Any stockholder, member, or other holder of any securities, evidences of indebtedness, or shares of the capital stock of the corporation who realizes a loss from the sale, redemption, or other disposition of any securities, evidences of indebtedness, or shares of the capital stock of the corporation, including any loss realized on a partial or complete liquidation of the corporation, and who is not entitled to deduct the loss in computing any of the stockholder's, member's, or other holder's taxes to the State shall be entitled to credit against any taxes subsequently becoming due to the State from the stockholder, member, or other holder, a percentage of the loss equivalent to the highest rate of tax assessed for the year in which the loss occurs upon mercantile and business corporations.

**§420-17 Limitation on effect of chapter.** If a corporation organized pursuant to this chapter fails to begin business within two years from the effective date of its articles, then the articles shall become void. If no corporation is organized by June 30, 1968, pursuant to this chapter, then this chapter shall become void.

**§420-18 Credit of State not affected.** Under no circumstances is the credit of the State pledged herein.